

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

v.

No. 2:04-CR-20006

SCOTT JAMES EIZEMBER

DEFENDANT

OPINION AND ORDER

A mandate (Doc. 76) from the United States Court of Appeals for the Eighth Circuit was entered in this case on September 11, 2019, vacating Defendant's conviction and sentence on Count 3 of the indictment and remanding to this Court for further proceedings. On September 16, 2019, the Government filed a motion (Doc. 77) to dismiss Count 3 of the indictment against Defendant. The deadline to respond has not passed, but no response is necessary. The motion will be granted.

Count 3 charged Defendant with possessing, using, and brandishing a firearm during a crime of violence. The parties agreed and jointly moved on appeal for summary reversal of the conviction on Count 3 and remand in light of the decision of the United States Supreme Court in *United States v. Davis*, --U.S.--, 139 S.Ct. 2319 (2019). As argued by the parties in their joint motion to the Eighth Circuit Court of Appeals and by the Government in the instant motion, the underlying crime for Count 3—kidnapping in violation of 18 U.S.C. § 1201(a)—can no longer be considered a “crime of violence.”

Following the dismissal of Count 3, resentencing of Defendant will be necessary. The United States Probation Office will be directed to prepare an amended presentence investigation report and the parties will be permitted to file objections to that report.

IT IS THEREFORE ORDERED that the motion (Doc. 77) is GRANTED and Count 3 of

the indictment (Doc. 1) against Defendant Scott James Eizember is DISMISSED.

IT IS SO ORDERED this 17th day of September, 2019.

/s/ P. K. Holmes, III

P.K. HOLMES, III
U.S. DISTRICT JUDGE